

██████████ was audited and initially issued an estimated assessment due its failure to provide the necessary records to the field auditor. ██████████ protested and asserted that the necessary records had been assembled. The audit was reassigned resulting in the adjusted assessment at issue. ██████████ timely protested the assessment via letter on ██████████, 2009. This letter did not set forth any grounds for the protest but instead, requested additional time to provide supporting documentation for the protest. An extension was granted to ██████████, 2009. By letter, additional requests for information dated ██████████, 2009 and ██████████, 2010 were mailed to ██████████. With each request, an additional forty-five extension was granted. Despite these extensions, ██████████ has failed to submit any supporting documentation that would enable DOR to determine whether the transactions for which tax was assessed were indeed taxable or not or whether ██████████'s protest had any merit.

At issue is whether ██████████ has complied with the requirements of KRS 131.110(1), which states in pertinent part:

The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable

The Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the Department with “something more substantial than mere denials of tax liability.” Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, 698 S.W.2d 528, 530 (Ky.App., 1985). In order to make a valid protest, a taxpayer must “provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration.” Id. at 529.

The courts have further held that KRS 131.110(1) is “mandatory in nature” and that failure to submit documentation as it requires will result in the taxpayer’s loss of the right to further review of the assessment or refund denial in question. Scotty’s Construction Co. v. Revenue Cabinet, 779 S.W.2d 234 (Ky.App., 1989). In both Scotty’s Construction and Eagle Machine, the taxpayers failed to provide any substantial information in support of their denials of tax liability, despite being given ample opportunity to do so. The same is true in this matter.

As indicated above, a penalty has been assessed pursuant to KRS 131.180(2) because of ██████████'s failure to have timely paid at least 75% of the tax determined to be due by the DOR. ██████████ has provided nothing that would indicate that this penalty was erroneously applied or that it should be waived or abated.

Therefore, the outstanding sales and use tax assessment totaling \$ ██████████ (plus applicable penalty and interest) is deemed the legitimate liability of ██████████, Inc. due to the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal's office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40602-2120, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that petition of appeal must:

- (1) Be filed in quintuplicate;
- (2) Contain a brief statement of the law and facts at issue;
- (3) Contain the petitioner's or appellant's position as to the law and facts; and
- (4) Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in section 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent himself, any other individual, corporation, trust, estate or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the clerk of the board of the date and time set for any hearing.

Sincerely,



E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

cc: [REDACTED], Inc.
[REDACTED], Account Manager
[REDACTED]

CERTIFIED MAIL
RETURN RECEIPT REQUESTED